

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Robert L. Meyers

Licensee of Amateur Radio Station N5WLY
Houston, TX

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File No. 99-HU-039

NAL/Acct.No. X3254-001

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: January 13, 2000

By the Enforcement Bureau, Houston Office:

I. INTRODUCTION

1. This is a Notice of Apparent Liability for Forfeiture pursuant to Section 503(b) of the Communications Act of 1934, as amended (the "Communications Act"),¹ and Section 1.80 of the Commission's Rules,² against Robert L. Meyers ("Meyers"), licensee of Amateur Radio Station N5WLY, Houston, Texas. We find that Meyers operated his Amateur Radio station so as to willfully and maliciously cause interference to radio communications in apparent willful violation of Section 333 of the Communications Act³ and Section 97.101(d) of the Commission's Rules,⁴ and transmitted unidentified communications in apparent willful violation of Section 97.119(a) of the Commission's Rules.⁵ For the reasons discussed below, we conclude that Meyers is apparently liable for a forfeiture in the amount of \$8000.

II. BACKGROUND

2. From 1993 through 1999, the Commission's Houston Office received complaints of alleged intentional interference to users of the Memorial Emergency Repeater Association's 145.470/144.870 MHz repeater in Houston, Texas ("MERA repeater"). The interference was allegedly caused by stations transmitting unidentified tones, inflammatory or derogatory remarks, and unmodulated signals, none of which were identified with an FCC-assigned call sign.

3. On February 24, 1999, a Commission agent, using a mobile automatic direction finding

¹ 47 U.S.C. § 503(b)

² 47 C.F.R. § 1.80

³ 47 U.S.C. § 333

⁴ 47 C.F.R. § 97.101(d)

⁵ 47 C.F.R. § 97.119(a)

(“MADF”) vehicle to monitor the MERA repeater, observed a radio signal consisting of unidentified derogatory remarks being transmitted on the input frequency of the MERA repeater. The agent simultaneously monitored the output frequency of the MERA repeater and observed that this signal would transmit immediately after other stations would commence transmitting, resulting in interference to communications already in progress on the MERA repeater. At about 6:45 a.m., using the MADF equipment and direction-finding techniques, the agent determined that the source of the unidentified interfering transmissions was a red Jeep Cherokee bearing Texas license plate C39CYK. This vehicle was registered to Robert L. Meyers, license holder of Amateur Radio Service license N5WLY.

4. On June 1, 1999, two Commission agents visited Meyers and conducted an administrative inspection of the red Jeep Cherokee. Meyers admitted owning the vehicle and admitted to being the licensee of Amateur Radio Station N5WLY. Meyers was issued an Official Notice of Violation citing violation of 47 U.S.C. § 333 and 47 C.F.R. § 97.101(c) (willful or malicious interference), and 47 C.F.R. § 97.119 (failure to identify amateur communications).⁶

5. On June 8, 1999, the Commission’s Houston Office received a letter from Meyers dated June 7, 1999, in response to the Official Notice of Violation. In the response letter, Meyers denied the violations and denied any operation at the times cited. Meyers’ response letter also stated that Meyers would take precautionary steps to insure that no accidental transmissions would occur from his station.

III. DISCUSSION

6. Section 333 of the Communications Act and Section 97.101(d) of the Commission’s Rules both prohibit willful or malicious interference to radio communications. Section 97.119(a) of the Commission’s Rules prohibits the transmission of unidentified communications in the Amateur Radio Service.

7. Section 503(b) of the Communications Act and Section 1.80(a) of the Commission’s Rules both state that any person who willfully or repeatedly fails to comply with the provisions of the Communications Act or the Commission’s Rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Communications Act, the term “willful” means that the violator knew that it was taking the action in question, irrespective of any intent to violate any provision of the Communications Act or the Commission’s Rules.⁷

8. Based on the evidence before us, we find that on February 24, 1999, Robert L. Meyers did use his Amateur Radio Station N5WLY to transmit radio communications and, in so doing, willfully and maliciously interfere with Amateur Radio communications already in progress, in apparent willful violation of Section 333 of the Communications Act and Section 97.101(d) of the Commission’s Rules; and failed to identify those communications, in apparent willful violation of

⁶ Official Notice of Violation dated June 1, 1999. The Notice accurately stated the correct wording but erroneously cited “47 C.F.R. § 97.101(c)” instead of the correct citation “47 C.F.R. § 97.101(d).”

⁷ See 47 U.S.C. § 312(f)(1); see also *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

Section 97.119(a) of the Commission's Rules. The interference was willful and malicious in that Meyers timed his transmissions to commence just after other stations had begun transmitting, resulting in harmful interference to communications already in progress. Also, both violations were willful in that Meyers sought to conceal his identity by altering the sound of his normal voice and omitting the required identification.

9. The Commission's *Forfeiture Policy Statement*, which became effective October 14, 1997, sets a base forfeiture amount of \$7000 for intentional interference and \$1000 for failure to identify.⁸ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act,⁹ that include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Policy Statement* and statutory factors to the instant case, a monetary forfeiture in the amount of \$8000 is warranted.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,¹⁰ that Robert L. Meyers is hereby **NOTIFIED** of his **APPARENT LIABILITY FOR MONETARY FORFEITURE** in the amount of **EIGHT THOUSAND DOLLARS (\$8000)** for the willful violation of Section 333 of the Communications Act, Section 97.101(d) of the Commission's Rules, and Section 97.119(a) of the Commission's Rules.

11. **IT IS FURTHER ORDERED**, pursuant to Section 1.80 of the Commission's Rules, that **WITHIN THIRTY (30) DAYS** of the release of this Notice, **ROBERT L. MEYERS SHALL PAY** to the United States the full amount of the monetary forfeiture¹¹ **OR SHALL FILE** a written statement showing why the forfeiture should be reduced or cancelled.¹² The payment or statement should be marked with NAL/Acct. No: X3254-001.

⁸ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 17087 (1997), *recon. pending*; 47 C.F.R. § 1.80(b).

⁹ 47 U.S.C. § 503(b)(2)(D)

¹⁰ 47 C.F.R. §§ 0.111, 0.311, and 1.80.

¹¹ Payment may be made by credit card by calling the Commission's Credit and Debt Management Center at 202-418-1995, or by check or similar instrument payable to the "Federal Communications Commission" and mailed to: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Please mark the payment with the NAL/Acct. No.

¹² Mail written statements to: Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau, Mail Stop 1500E3-DLH. A claim of inability to pay should be supported by tax returns or other financial statements prepared under generally accepted accounting procedures for the most recent three-year period. Requests for payment under installment plans should be mailed to: Chief, Credit and Debt Management Center, Rm. 1-A820, FOD / AMD-HRM, Federal Communications Commission, 445 12th Street, S.W., Washington, DC, 20554.

12. **IT IS FURTHER ORDERED** that this notice shall be sent, by certified mail, return receipt requested, to Robert L. Meyers, 7358 Crownwest Drive, Houston, TX 77072.

FEDERAL COMMUNICATIONS COMMISSION

Loyd P. Perry
Resident Agent, Houston Office